

**77-14-3 Testimony regarding mental state of defendant or another -- Notice requirements -- Right to examination.**

- (1)
  - (a) If the prosecution or the defense intends to call any expert to testify at trial or at any hearing regarding the mental state of the defendant or another, the party intending to call the expert shall give notice to the opposing party as soon as practicable but not less than 30 days before trial or 10 days before any hearing at which the testimony is offered. Notice shall include the name and address of the expert, the expert's curriculum vitae, and a copy of the expert's report.
  - (b) The expert shall prepare a written report relating to the proposed testimony. If the expert has not prepared a report or the report does not adequately inform concerning the substance of the expert's proposed testimony including any opinion and the bases and reasons of that opinion, the party intending to call the expert shall provide a written explanation of the expert's anticipated testimony sufficient to give the opposing party adequate notice to prepare to meet the testimony, followed by a copy of any report prepared by the expert when available.
- (2) As soon as practicable after receipt of the expert's report, the party receiving notice shall provide notice to the other party of witnesses whom the party anticipates calling to rebut the expert's testimony, including the name and address of any expert witness and the expert's curriculum vitae. If available, a report of any rebuttal expert shall be provided. If the rebuttal expert has not prepared a report or the report does not adequately inform concerning the substance of the expert's proposed rebuttal testimony, or in the event the witness is not an expert, the party intending to call the rebuttal witness shall provide a written explanation of the witness's anticipated rebuttal testimony sufficient to give the opposing party adequate notice to prepare to meet the testimony, followed by a copy of any report prepared by any rebuttal expert when available.
- (3) If the prosecution or the defense proposes to introduce testimony of an expert which is based upon personal contact, interview, observation, or psychological testing of the defendant, testimony of an expert involving a mental diagnosis of the defendant, or testimony of an expert that the defendant does or does not fit a psychological or sociological profile, the opposing party shall have a corresponding right to have its own expert examine and evaluate the defendant.
- (4) This section applies to any trial, sentencing hearing, and other hearing, excluding a preliminary hearing, whether or not the defendant proposes to offer evidence of the defense of insanity or diminished mental capacity.
- (5) If the defendant or the prosecution fails to meet the requirements of this section, the opposing party shall be entitled to a continuance of the trial or hearing sufficient to allow preparation to meet the testimony. If the court finds that the failure to comply with this section is the result of bad faith on the part of any party or attorney, the court shall impose appropriate sanctions.
- (6) This section may not require the admission of evidence not otherwise admissible.

Amended by Chapter 139, 1994 General Session